



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE CITY CENTRE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNDC MNSD OLC FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for damages to the property;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- d) For a return of the security deposit pursuant to section 38;
- e) To dispute an illegal rent increase pursuant to sections 42 and 43; and
- f) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of each other's Application for Dispute Resolution. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

The tenant vacated the unit on February 14, 2015. Has the landlord proved on the balance of probabilities that the tenant owes rent and damaged the property, that it was beyond reasonable wear and tear and the amount it cost to fix the damage? If so, what is the amount of the compensation and is the landlord entitled to recover filing fees also?

Is the tenant entitled to twice the security deposit refunded and to recover overpaid rent and filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced September 13, 2013 on a fixed term expiring September 13, 2014, that rent was \$1250 payable on or before the first of each month and a security deposit of \$675 was paid.

It is undisputed that the tenant paid rent up to February 13, 2015; the landlord claims the remainder of the rent for February 2015 in the amount of \$700 as the tenant did not give them one month's notice to end the tenancy. Apparently the landlord gave the tenant a one month notice for cause on January 26, 2015 to be effective February 28, 2015. The tenant said there was a mutual verbal agreement that they would move out and they rented a house for February 1, 2015 and got great references from these landlords.

The landlord also claims a move in fee of \$100 and a move out fee of \$200 and \$150 for fobs and rekeying. The tenant said he received a copy of the Strata Bylaws but had no notification of the move-in and move-out fees until he received a copy of a letter in evidence for this hearing. The landlord said he was notified several times of the move in fee and never paid it. The landlord also claims \$2700 for flooring. They said the carpet was very dirty and damaged, especially where an aquarium had been placed by the tenant. The tenant said the flooring problem existed before he moved in, his fish tank did no damage, the prior tenant had a dog and there were stains on the carpet at move-in. It was undisputed that the paint and carpet were original so were about 6 years old.

The tenant claims a refund of his security deposit, doubled if appropriate under section 38 of the Act and a refund of overpaid rent. He said his rent was raised by \$50 a month from September 2014 to February 2015 and he received no notice of rent increase. The landlord provided a copy of the lease showing both sets of initials where it states that vacant possession is required at the end of the tenancy (September 2014); he said there was a new tenancy agreement wherein the rent was increased by \$50. The tenant denied putting his initials on any tenancy agreement requiring vacant possession and he submitted another copy of the tenancy agreement showing none of his initials at the relevant clause.

In evidence are conflicting tenancy agreements, move-in and move-out condition inspection reports, some photographs, emails, a late USB, Notices of Entry and a late submission from the tenant.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The onus is on the applicant to prove on a balance of probabilities their claim. I find the landlord entitled to unpaid rent for half of February 2015 as the tenant provided insufficient evidence of any notice to end his tenancy or agreement to end the tenancy earlier. I find there was a legal Notice to End Tenancy on February 28, 2015 served by the landlord on January 26, 2015 and I find no evidence of a Notice to End tenancy by the tenant. While there may have been a verbal agreement, there is no proof of this to contradict the landlord's legal claim for rent to the end of February 2015.

I find the landlord entitled to recover the move-in and move-out fees which were the tenant's obligation. Although the tenant said he had no notice of these, I find section 38 of the tenancy agreement obliges him to comply with the Strata Property Act and Bylaws and Bylaw 34 imposes move-in and move-out fees as pointed out in a letter from the Strata. The tenant acknowledged receiving a copy of the Bylaws shortly after move-in. I find the tenant liable to pay the fees imposed by the Strata of \$200 move-out fee and fine and \$100 move-in fee. I find the tenant is liable for the fine as he moved without arranging it with the Strata so the owner incurred this cost. I find him also liable for \$150 for fobs and rekeying.

In respect to the claim for flooring, I find the unit was about 6 years old and no damage to the floors was noted at move-in, although they were classified as being in "fair condition". At move-out, the report notes walls and floors (carpets) as being very dirty. The owner chose not to get an estimate for cleaning but for replacing the floors with laminate. As the Residential Policy Guideline assigns a useful life for carpets of 10 years, I find the most the landlord would be entitled to recover would be \$1080 (40% of \$2700) even if the floors were destroyed. However, I find insufficient evidence to support the landlord's claim that these floors needed replacing with laminate rather than cleaning. Although the tenant maintained that they were no better at move-in, I find the condition inspection reports which he agreed he signed said the carpets were 'fair' at move-in but very dirty at move-out. However, landlord did not get an estimate for cleaning so I award him a nominal amount of \$150 pursuant to Residential Tenancy Policy Guideline 16-3 since the evidence is that the carpets were very dirty at the end of the tenancy and the landlord is entitled to some compensation to clean them.

The tenant claims a refund of his security deposit. The evidence is that the tenant vacated on February 14, 2015 and provided his forwarding address at that time. However, I find the tenancy did not end until February 28, 2015 pursuant to the landlord's Notice to End Tenancy. I find the landlord filed their application on March 5, 2015 which is within the 15 days allowed by section 38 of the Act to avoid the doubling provision. The refund of the tenant's security will be used in the calculation of monetary awards for both parties set out below.

Regarding the rent increase in September 2014, I find the tenant's rent was illegally increased as the evidence is that there was no Notice of Rent Increase as required by section 43 of the

Act. Although the landlord maintained there was a new contract as the tenant had agreed to vacate at the end of the term, I find insufficient evidence that the tenant had initialled the boxes as required to acknowledge this term. I find insufficient evidence that the tenant altered his copies of the leases provided in evidence and they are not initialled. I find the tenant entitled to recover \$50 a month for 6 months of overpayment or \$300.

Conclusion:

I find the parties entitled to monetary awards as calculated below. I find both are entitled to recover filing fees for their applications as both had merit.

Calculation of Monetary Award:

Balance of rent for February 2015	700.00
Move-in/out fees and fine	300.00
Fob and key replacement	150.00
Nominal amount for carpet cleaning	150.00
Filing fee to landlord	50.00
Less security deposit	-675.00
Less refund of overpaid rent	-300.00
Less filing fee to tenant	-50.00
Balance is Monetary Order to Landlord	325.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 21, 2015

Residential Tenancy Branch

